

57-21-10 Judicial election or formal adjudicative hearing.

- (1) If, pursuant to Subsection 57-21-9(7)(c), the director issues a written determination finding reasonable cause to believe that a discriminatory housing practice has occurred, or is about to occur, a respondent may obtain de novo review of the determination by submitting a written request for a formal adjudicative hearing to be conducted by the commission's Division of Adjudication in accordance with Title 34A, Chapter 1, Part 3, Adjudicative Proceedings, to the director within 30 days from the date of issuance of the determination. If the director does not receive a timely request for review, the director's determination becomes the final order of the commission and is not subject to further agency action or direct judicial review.
- (2) If a respondent files a timely request for review pursuant to Subsection (1):
 - (a) any respondent, complainant, or aggrieved party may elect to have the de novo review take place in a civil action in the district court rather than in a formal adjudicative hearing with the Division of Adjudication by filing an election with the commission in accordance with rules established by the commission pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the form and time period for the election;
 - (b) the complainant shall file a complaint for review in the forum selected pursuant to Subsection (2)(a) within 30 days after the completion of the forum selection process; and
 - (c) the commission shall determine whether the director's determination is supported by substantial evidence.
- (3) If, pursuant to Subsection (2)(c), the commission determines that the director's determination is supported by substantial evidence, the commission shall provide legal representation on behalf of the aggrieved person, including the filing of a complaint for review as required by Subsection (2)(b), to support and enforce the director's determination in the de novo review proceeding. Notwithstanding any provisions of Title 63G, Chapter 4, Administrative Procedures Act, the commission's determination regarding the existence or nonexistence of substantial evidence to support the director's determination is not subject to further agency action or direct judicial review.
- (4) Upon timely application, an aggrieved person may intervene with respect to the issues to be determined in a formal adjudicative hearing or in a civil action brought under this section.
- (5) If a formal adjudicative hearing is elected, all of the following apply:
 - (a) The presiding officer shall commence the formal adjudicative hearing within 150 days after the respondent files a request for review of the director's determination unless it is impracticable to do so.
 - (b) The investigator who investigated the matter may not participate in the formal adjudicative hearing, except as a witness, nor may the investigator participate in the deliberations of the presiding officer.
 - (c) Any party to the complaint may file a written request to the Division of Adjudication for review of the presiding officer's order in accordance with Section 63G-4-301 and Title 34A, Chapter 1, Part 3, Adjudicative Proceedings.
 - (d) A final order of the commission under this section is subject to judicial review as provided in Section 63G-4-403 and Title 34A, Chapter 1, Part 3, Adjudicative Proceedings.
- (6) If a civil action is elected, the commission is barred from continuing or commencing any adjudicative proceeding in connection with the same claims under this chapter.
- (7) The commission shall make final administrative disposition of the complaint alleging a discriminatory housing practice within one year after the filing of the complaint, unless it is impracticable to do so. If the commission is unable to make final administrative disposition within one year, the commission shall notify the complainant, respondent, and any other interested party in writing of the reasons for the delay.

Amended by Chapter 382, 2008 General Session